

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

GEORGIA FERRELL, as Administratrix of  
the Estate of JONATHAN A.P. FERRELL,

Plaintiff,

vs.

CITY OF CHARLOTTE; COUNTY OF  
MECKLENBURG; RANDALL W.  
KERRICK, both individually and in his official  
capacity as a law enforcement officer with the  
Charlotte-Mecklenburg Police Department;  
and RODNEY MONROE, in his official  
capacity as a law enforcement officer with the  
Charlotte-Mecklenburg Police Department,

Defendants.

CIVIL ACTION NO.: 3:14-cv-47

**ORDER**

**THIS MATTER** is before the Court on Defendant Mecklenburg County's Motion to Dismiss (Doc. No. 24) and Plaintiff's Motion to Exclude Exhibits or Convert 12(b)(6) Motion to Rule 56 Motion for Summary Judgment (Doc. No. 27), as well as the parties' briefs on these motions. Plaintiff filed his motion to exclude or convert in response to Defendant County's motion to dismiss, arguing that because that motion presented matters outside the pleadings—namely the consolidation agreements between Defendants City and County and an affidavit of the Mecklenburg County Manager—the Court should either exclude those exhibits or convert the motion to one for summary judgment.

The Court conducted a status conference in this case on October 6, 2014. At that conference, the Court ordered limited discovery, to include fact depositions, on the issues presented in the County's motion. Plaintiff has now filed a supplemental response to the

County's motion to dismiss, which includes transcript excerpts from a Rule 30(b)(6) deposition of the County, as well as other documents in support of his opposition to the County's motion.

Thus, having considered parties' respective briefs on this issue, and for the additional reasons stated at the status conference, the Court will **GRANT in part** Plaintiff's motion (Doc. No. 27) and convert the County's motion to dismiss into a Rule 56 motion for summary judgment. The Court will also allow Defendant County to file a brief in response to Plaintiff's supplemental response, if it so chooses, within fifteen (15) days of the date of this order.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion to Exclude or Convert (Doc. No. 27) is **GRANTED in part**. Defendant County's Motion to Dismiss (Doc. No. 24) is converted to a Rule 56 motion for summary judgment.

**IT IS FURTHER ORDERED** that Defendant County may file a brief in response to Plaintiff's supplemental response (Doc. No. 34) within fifteen (15) days of the date of this order. The County's response, should it choose to file one, should reflect the standard for summary judgment articulated in Rule 56.

**SO ORDERED.**

Signed: February 10, 2015

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

